

in the

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-610

COLUMBUS BOARD OF EDUCATION, et al.,  
v. Petitioners,

GARY L. PENICK, et al.

No. 78-627

DAYTON BOARD OF EDUCATION, et al.,  
v. Petitioners,

MARK BRINKMAN, et al.

On Writs of Certiorari to the United States  
Court of Appeals for the Sixth Circuit

RESPONDENTS' OPPOSITION TO  
MOTIONS OF CLEVELAND, OHIO CITY SCHOOL DISTRICT  
FOR LEAVE TO FILE BRIEFS AMICUS CURIAE

On March 30, 1979 (four days after the filing of the Briefs for Respondents in each of these cases, and thirty-six days after the filing of the Briefs for Petitioners and timely briefs of amicus curiae supporting Petitioners), the Cleveland, Ohio City School District [hereinafter "applicant"] has filed identical motions in these cases. The motions seek leave to file identical proposed briefs as amicus curiae supporting Petitioners in each of the above-captioned matters. Respondents respectfully urge that the Court deny the motions for leave to file, on the following grounds:

1. The motions are untimely. Rule 42(2) of this Court requires that the brief of an amicus curiae filed with consent of the parties be submitted "within the time allowed for the filing of the brief of the party supported," and Rule 42(3) provides that when consent has been withheld, "a motion for leave to file may timely be presented to the court" (emphasis supplied). In this instance, not only has the applicant failed to file either the brief or the motion in timely fashion -- by February 22, 1979 -- but no effort whatsoever was made to contact counsel for Respondents in these matters to determine whether consent would be granted. Applicant's callous disregard for the Court's orderly processes warrants denial of the motions for leave to file.

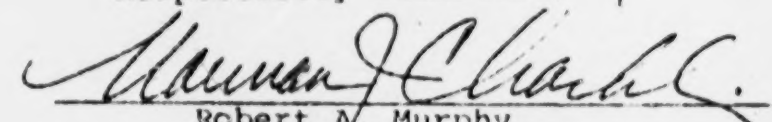
2. No good cause for out-of-time filing has been shown. Certainly there may be instances in which cause exists for allowing the late filing of a brief amicus curiae. Nothing in applicant's motion or brief, however, suggests that such cause exists here. The matters which applicant now finds so critical to this Court's consideration of the Columbus and Dayton school desegregation cases (a speech by another district judge who has had nothing to do with these cases) occurred in October, 1978, months before the writs of certiorari were issued in these cases. Furthermore, as the motion reveals (pp. 3-4), applicant will have a seasonable opportunity to present its concerns about the Cleveland school desegregation case since implementation of any remedy in that case has been stayed by the Court of Appeals for the Sixth Circuit pending decision in the matters at bar. Under the circumstances, there is no reason for this Court in these cases to consider either applicant's exaggerated and misleading charges about the rulings in the Cleveland suit or the extrajudicial statements of the district judge in that matter.

3. Applicant's proposed brief is irrelevant to these cases. The matters which applicant seeks to bring to the attention of

this Court are completely irrelevant to the issues in Dayton and Columbus. Applicant's argument -- based on a flagrant misrepresentation of Judge Battisti's speech as the equivalent of an admission that he "does not confine himself to 'sound pronouncements of the law' " (p. 6) -- would be strained enough if made in a case in which the propriety of Judge Battisti's orders was before the Court. In these cases, involving the judgments of other federal district courts in Ohio, the argument is superfluous and frivolous.

Respondents do not shrink from permitting the Court to read the speech given by Judge Battisti which is reprinted by applicant. We do suggest that the flat ignoring of this Court's rules and the utter irrelevance of applicant's brief to the particular merits of these cases should result in the denial of their motion for leave to file as amicus curiae.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 1979, I served one copy of the foregoing Respondents' Opposition to Motions of Cleveland, Ohio City School District for Leave to File Briefs Amicus Curiae in the above-captioned matters upon each of the following counsel for the other parties thereto, and upon counsel for the Cleveland, Ohio City School District, by depositing same in the United States mail, air mail postage prepaid, addressed as follows:

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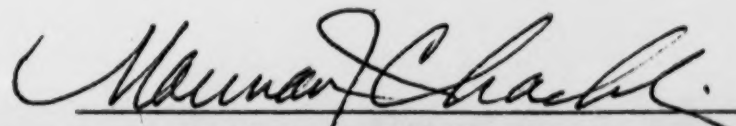
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All parties required to be served have been served.

  
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